

1  
2  
3  
4  
5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**  
7

8 ARTHUR J. BREWER,

9 *Petitioner,*

10 vs.

11 BRIAN E. WILLIAMS, *et al.,*

12 *Respondents.*  
13

2:11-cv-01556-PMP-PAL

ORDER

14 This habeas matter under 28 U.S.C. § 2254 comes before the Court on a *sua sponte*  
15 inquiry into whether the Petition is time-barred because it was not filed within the one-year  
16 limitation period in 28 U.S.C. § 2244(d)(1). This order follows upon the Court's earlier show  
17 cause order (#8) and Petitioner's response (#10) thereto.

18 Petitioner does not dispute either the procedural history outlined in the show cause  
19 order or the Court's calculation of the federal limitation period. See #8, at 1-3. Petitioner's  
20 sole contention is that his claim is not subject to the federal time-bar because he is raising a  
21 "jurisdictional challenge." He alleges that the state district court did not have jurisdiction to  
22 sentence him as a habitual criminal because of the procedural error alleged. This  
23 "jurisdictional error" argument is frivolous. There is no alleged "jurisdictional error" exception  
24 to § 2244(d)(1). None of the cases cited by Petitioner have anything to do with application  
25 of § 2244(d)(1). Cases concerning the jurisdiction of a federal district court in a federal  
26 criminal proceeding have nothing to do with federal habeas review of a state court conviction.  
27 This is a frequently-made but frivolous argument that finds favor only in the jailhouse, not the  
28 courthouse.

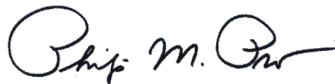
1 The Court further would note in this regard that the Supreme Court of Nevada  
2 expressly held that Petitioner “failed to demonstrate that his sentence was facially illegal or  
3 that the district court lacked jurisdiction.” #6, Ex. 28. The question of whether the Nevada  
4 state district court had jurisdiction to impose sentence on an in-state offense<sup>1</sup> is purely a  
5 question of Nevada state law, and the Supreme Court of Nevada is the final – and only –  
6 arbiter of Nevada state law. Petitioner’s inapposite citations notwithstanding, allegations only  
7 that the state district court violated the Constitution in imposing sentence would not give rise  
8 to “jurisdictional error,” although habeas petitioners frequently seek to benefit by labeling a  
9 constitutional claim as a claim of “jurisdictional error.” Such arguments, again, are wholly  
10 frivolous as a basis for avoiding the federal time-bar.

11 IT THEREFORE IS ORDERED that the Petition shall be DISMISSED with prejudice  
12 as time-barred.

13 IT FURTHER IS ORDERED that a certificate of appealability is DENIED. Reasonable  
14 jurists would not find debatable or wrong the district court’s dismissal of the petition as  
15 untimely. Petitioner’s sole argument that the federal time-bar does not apply because he  
16 raises a claim of “jurisdictional error” is patently frivolous on its face.

17 The Clerk of the Court shall enter final judgment accordingly, in favor of Respondents  
18 and against Petitioner, dismissing this action with prejudice.

19 DATED: March 5, 2012.

20  
21 

22 \_\_\_\_\_  
23 PHILIP M. PRO  
24 United States District Judge  
25  
26  
27

28 <sup>1</sup> Petitioner pled guilty to one count of possession of a stolen vehicle. E.g., #5, Ex. 3, at 2.